S.B. CIVIL WRIT PETITION NO.21/2005
Kamla vs. State of Raj. and others.

Date : 28.1.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. G.K. Vyas, for the petitioner.

Mr. Shyam Ladrecha, Dy.GA, for the respondents.

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Heard learned counsel for the parties.

The brief facts of the case are that the petitioner is resident of Bheekhnera, Tehsil Loonkaransar, District Bikaner. She was born in Rajput Community but she married to one Rati Ram Choudhary, who is belonging to Jat Community. The marriage took place in the year 1980.

According to learned counsel for the petitioner, after marriage, she became member of a Jat family and she cannot be treated as member of Rajput Community. The petitioner was recognised as Jat and even a certificate (Annex.3) by a competent authority has been issued to the petitioner showing that she is belonging to jat community. The petitioner has apprehension that her nomination for the office of Panch or Sarpanch may be rejected by Returning Officer on the basis of a circular which has been issued by the State of Rajasthan on 5.3.2001, though, it has not been issued by a competent authority giving guidelines to the Returning Officer and has been issued for the reservation of the seats of the backward classes in

service under the State Government.

According to learned counsel for the petitioner, since the petitioner got married in the year 1980 and almost 25 years have passed, therefore, it cannot be said that the petitioner implanted herself in the Jat Community to take benefit of reservation of seats in the election, therefore, the petitioner's candidature cannot be rejected by the returning officer for the reserved constituency (reserved for backward class). Learned counsel for the petitioner, in this regard, relied on the judgment of Apex Court delivered in the case of Mrs. Valsamma Paul vs. Cochin University and others reported in AIR 1996 SC 1011 and judgment of Delhi High Court in the case of Ms. Sunita vs. Krishan Lal.

Learned Deputy Government Advocate appearing on behalf of the respondents submitted that the writ petition is premature as the petitioner has filed the writ petition without there being any decision of the returning officer who alone is competent to decide the qualification and disqualification of a candidate in the election. It is also submitted that in view of the decision of Supreme Court relied upon by the petitioner herself, the petitioner cannot claim any benefit as she was not born in a backward class. The respondent also placed on record copy of circular dated 5.3.2001 wherein it is provided that the benefit of reservation shall be available to ladies as per

their pre-marital status and, therefore, the benefit of reservation for O.B.C. would not be admissible to a woman who was born in any of the caste which is not notified as one of O.B.C.

In view of the fact that whether a candidate is qualified can be decided only by returning officer, therefore, the present writ petition appears to be pre-mature. Even if the plea of learned counsel for the petitioner is accepted that the law has been made clear by Apex Court and the circular issued by the Government on 5.3.2001 applies to the matter of appointment in service under the State Government, then all these facts can be brought to the notice of Returning Officer at the time of consideration of candidature of the petitioner. This Court cannot presume that the Returning Officer who has been given jurisdiction to decide the candidature of the persons will not consider the legal position and can ignore the law laid down by the Courts.

In view of the above, the writ petition of the petitioner is dismissed as premature.

(PRAKASH TATIA), J.

S.Phophaliya